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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/553,997

10/21/2005

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43289-224746

9881

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7590

12/30/2008

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EXAMINER

MA, JAMESON Q

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

12/30/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/553,997	<b>Applicant(s)</b> KORPINEN ET AL.	
	<b>Examiner</b> JAMESON Q. MA	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20051021</u> .  | 6) <input type="checkbox"/> Other: ____.                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 16-26 and 29-38 are rejected under 35 U.S.C. 102(b) as being anticipated by McNeely et al. (from IDS, WO 02/072423).

Regarding claim 16, McNeely discloses an analysis and culture apparatus comprising several wells having depth directions (see Fig. 1: microplate 10 and wells 16), the wells having separate caps to close the wells to form closed spaces (see Fig. 1: lid 12 and protrusions 20), wherein the caps can be removably attached in the wells and have an inlet passage (see Fig. 2: opening 22) and an outlet passage (see Fig. 2: opening 24) integrated in the cap for introducing matter to the closed space and for removing it from the closed space, respectively.

Regarding claims 17 and 18, McNeely discloses all of the claim limitations as set forth above. Additionally McNeely discloses the apparatus:

- wherein the cap comprises an insert part (see Fig. 2: protrusion 20) that can be placed in the well, said insert part having a lower surface (see Fig. 2: underside 26), and a shoulder (see Fig. 2: the underside of lid 12 is a shoulder) supported by an upper edge of the well.

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- wherein the cap comprises a flange part being wider than the insert part and having a lower surface forming said shoulder (see Figs. 1 & 2: lid 12 is a flange part).

Regarding claims 19 and 20, McNeely discloses all of the claim limitations as set forth above. Additionally McNeely discloses the apparatus:

- wherein there is a seal around the insert part, which seal is placed against a side wall of the well (see Fig. 3 and P7/L18-24).

Regarding claims 21 and 22, McNeely discloses all of the claim limitations as set forth above. Additionally McNeely discloses the apparatus:

- wherein the inlet passage and the outlet passage open on the lower surface of the insert part (see Figs. 2-4).

Regarding claims 23 and 24, McNeely discloses all of the claim limitations as set forth above. Additionally McNeely discloses the apparatus:

- wherein the inlet passage opens at a lower position than the outlet passage (see Fig. 3: if the disclosed figure is rotated 90 degrees counter-clockwise, inlet opening 22 opens at a lower position than outlet opening 24).
- wherein, in order to couple the inlet and outlet channels to the cap (see Fig. 3: inlet and outlet channels 28 and 30 are already coupled to the cap), there are connection apertures on the outer surface of the flange part (see Fig. 1: inlet and outlets 17 and 19 can be viewed as connection apertures).

Regarding claims 25 and 26, McNeely discloses all of the claim limitations as set forth above. Additionally McNeely discloses the apparatus:

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- wherein there is an inclined portion on the lower surface of the insert part (see Fig. 3: the vertical sidewalls that define openings 22 and 24 are inclined with respect to interface layer 32).

Regarding claims 29 and 30, McNeely discloses all of the claim limitations as set forth above. Additionally McNeely discloses the apparatus:

- wherein separate input channels are brought to the caps placed in the wells (see Figs. 1 and 2: each protrusion 20 has its own separate input channel).

Regarding claim 31, McNeely discloses a cover (see Fig. 1: protrusion 20) for an analysis and culture apparatus comprising several wells (see Fig. 1: microplate 10), said cover being a separate cap, which can be removably attached to an individual well in order to close it, and to which an inlet passage and an outlet passage for bringing matter to the well and for removing it from the well, respectively, are integrated (see Fig. 3: inlet and outlet channels 28 and 30).

Regarding claims 32-33, McNeely discloses all of the claim limitations as set forth above. Additionally, McNeely discloses the cover:

- wherein the cap comprises an insert part (see Fig. 2: protrusion 20) which is intended to be placed in the well, said insert part having a lower surface (see Fig. 2: underside 26), and a shoulder (see Fig. 2: the underside of lid 12 is a shoulder) above the insert part, which is intended to be supported by an upper edge of the well.
- wherein the cap comprises a flange part being wider than the insert part and having a lower surface forming said shoulder (see Figs. 1 & 2: lid 12 is a flange part).

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Regarding claims 34-35, McNeely discloses all of the claim limitations as set forth above. Additionally, McNeely discloses the cover:

- wherein there is a seal around the insert part, which seal is placed against a side wall of the well (see Fig. 3 and P7/L18-24).

Regarding claims 36-38, McNeely discloses all of the claim limitations as set forth above. Additionally, McNeely discloses the cover:

- wherein the inlet passage and the outlet passage open on the lower surface of the insert part in the cap (see Figs. 2-4).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

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were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over McNeely et al (from IDS, WO 02/072423) as applied to claims 16-26 and 29-38 above, in view of Smith et al. (US 4,968,625).

Regarding claims 27 and 28, McNeely discloses all of the claim limitations as set forth above. Additionally, McNeely discloses that the top plate of the lid can be made of durable materials, such as hard plastic (see P13/L10-11).

McNeely does not explicitly disclose the apparatus wherein the cap is transparent in the depth of the well.

Smith teaches that vials and trays for multiwells can be made of polyethylene terephthalate (see abstract and C6/L40-54: polyethylene terephthalate is a transparent hard plastic).

It would have been obvious to one of ordinary skill in the art to make the lid of McNeely, with polyethylene terephthalate as taught by Smith, because doing so would result in nothing more than choosing from a finite number of identified, predictable solutions for hard plastics, with a reasonable expectation of success.

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***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMESON Q. MA whose telephone number is (571)270-7063. The examiner can normally be reached on M-R 8:30 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Warden Jill can be reached on (571)272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Samuel P Siefke/  
Primary Examiner, Art Unit 1797

JM  
December 22, 2008